

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1443 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

SUGRABIBI LBRAHIMIYA SHAIKH MOTHER OF DETENU AMINMIYA @

Versus

STATE OF GUJARAT

Appearance:

MR RS SANJANWALA for the Petitioner.

MR.HL JANI, AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 21/07/98

ORAL JUDGEMENT

The petitioner, whose son Aminmiya @ Batako Ibrahimmiya Shaikh is detained by an order dated 8-1-98 passed by the District Magistrate, Bharuch under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the legality and

validity of the order of detention.

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on two criminal cases registered against the detenu for offences punishable under Sections 147, 148, 149, 307, 323, 325, 333, 504, 506(2), 34 and 302 of the IPC . The said cases are pending in the Court. Over and above these two criminal cases, the detaining authority has also placed reliance on the statements of four witnesses whose identity was not disclosed by the detaining authority claiming privilege under Section 9 (2) of the PASA Act.

As far as witness No.1 is concerned, the detenu demanded Rs. 1000/- telling him that the witness is carrying on his activities in the area and since last two months the detenu has not been paid anything by the witness. and on being refused to accede to the request of the detenu, the witness was beaten by the associates of the detenu with the result the shops in the locality were closed as if curfew was imposed and an atmosphere of terror and fear was created. The detenu took away Rs.1700/- from the pocket of the witness.

Similarly as per the say of the second witness, from him the detenu demanded Rs.500/- and on being refused to pay the said amount, he was also treated in the similar manner like the first witness. Even from the pocket of this witness, the detenu had taken away Rs.1200/-.

As far as the third witness is concerned, the detenu had purchased seven audio-cassette s and refused to pay Rs.140/- and when the said amount was demanded, the witness was beaten.

As far as the 4th witness is concerned, the detenu had taken tea and refreshment and refused to pay Rs.2.75 and when ther witness demanded the money, the witness was beaten.

On the basis of the aforesaid material, the detaining authority recorded a finding that the detenu is a dangerous person within the meaning of Section 2(c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the detenu, which has been challenged by the petitioner by way of this petition.

Mr. Sajnanwala raised various contentions. However, since this petition is required to be allowed on the ground delay in passing the order of detention and on the ground of public order, it is not necessary to refer to and deal with all the contentions. The fact that the first offence was registered against the detenu on 12-8-96 and the second was registered on 15-10-97, when admittedly the detenu was released on bail, and the statements of the witnesses were recorded for the alleged incidents which took place about two months before the date of the said statements would cast a shadow of doubt about their genuineness and yet the detaining authority waited till 8-1-98 for passing the order of detention. Thus, there was a delay of about three months in passing the order of detention.

This petition is also required to be allowed on the ground that assuming for the sake of arguments that the allegations made against the detenu are true, the same at best can be treated as breaches of law and order and not public order. I have gone through the statements of the witnesses which are stereo-type. Reading the same, it clearly establishes without any manner of doubt that the statements are quite general and vague in nature and the alleged incidents are against individuals and the general public is not concerned at all and, therefore, it cannot be contended that the detenu is involved in committing breaches of public order. Even if the allegations made are believed to be true, the same at best can be termed as breach of law and order and in no circumstances the same can be termed as breach of public order. Consequently, therefore, the satisfaction arrived at by the detaining authority that the detenu is a dangerous person is also visited. The order of detention is therefore liable to be quashed and set aside.

In the result, this petition is allowed. The order of detention dated 8-1-98 is quashed and set aside. The detenu Aminmiya @ Batako Ibrahimmiya Shaikh is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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